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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,491	09/11/2001	Mark DeRaud	512.02	8054

7590 01/29/2004

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EXAMINER	
TRAN LIEN, THUY	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 01/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/954,491	DERAUD ET AL.	
	Examiner	Art Unit	
	Lien T Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 October 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-49* is/are pending in the application.

4a) Of the above claim(s) *30-49* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

Applicant's election with traverse of Group I claims 1-29 in the response filed Oct. 20, 2003is acknowledged. The traversal is on the ground(s) that the search for all the inventions would not put a serious burden on the examiner because a search of prior art of group I will uncover relevant prior art documents are the other two groups. This is not found persuasive because applicant has not submitted any evidence to show that a prior art search for one group will uncover relevant documents for the other two groups. Even if the inventions belong in the same classification, the search for the invention of group I is different from the invention of group II. The invention of group I requires a search for particular configuration and this configuration is not required in conducting the search for group II. The search for the apparatus of group III is further removed from the search of the other two groups.

The requirement is still deemed proper and is therefore made FINAL.

For clarification, claim 29 should have been included in Group I. Thus, claims 1-29 are examined in this office action.

Claims 1-29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Lines 3-4, the term " the top" is unclear because the claim has not set forth any top. Line 5, " the resulting slice" is indefinite because it is not clear what it is referring to; also, what is " the top of the resulting slice"?

In claim 3: Line 1, the word " that" should be deleted to make the claim clearer.

Claims 5,8,11,14,19,22,27 have the same problem as claim 1.

Claims 6, 12 have the same problem as claim 3.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the article on " Pizza Inversion" by Brad Appleton.

The article teaches to fold one half of the slice over the other half. It is also teach to fold the pointed end of the slice towards the crust end. (see page 4)

The article does not the combination of folding the end portion and then folding one half over the other half and the percent of end portion as claimed.

It would have been obvious to one skilled in the to combine folding of the end portion toward the crust and then folding one half over the other half if one want a closed pocket to further ensure that the topping and sauce will not drip out easily. Both foldings are known and to combine them when one wants a more closed in pocket would have been readily apparent to one skilled in the art. The percent of the folded

end depends on the length of the slice and how far one wants to fold. This can readily be determined by one skilled in the art. It would also have been obvious to fold pizza slice having any configuration. Wedge shape, round shape and square shape are all conventional shape for pizza.

Claims 14-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the article on " Pizza Inversion " by Brad Appleton in view of the cookbook " Cooking A to Z".

The article teaches to fold one half of the slice over the other half. It is also teach to fold the pointed end of the slice towards the crust end. (see page 4)

The article does not the combination of folding the end portion and then folding one half over the other half, the percent of end portion as claimed and pizza slice in which an end portion is substantially free of toppings and sauce.

The cookbook shows a pizza slice in which one end is substantially free of topping.

It would have been obvious to one skilled in the to combine folding of the end portion toward the crust and then folding one half over the other half if one want a closed pocket to further ensure that the topping and sauce will not drip out easily. Both foldings are known and to combine them when one wants a more closed in pocket would have been readily apparent to one skilled in the art. The percent of the folded end depends on the length of the slice and how far one wants to fold. This can readily be determined by one skilled in the art. It would also have been obvious to fold pizza slice having any configuration. Wedge shape, round shape and square shape are all

conventional shape for pizza. As to the end being free of topping and sauce, pizza is a very versatile food product. Many types of crust, topping and sauce can be used. The placement of the topping and quantity of topping and sauce can vary accordingly to taste. It would have been obvious to make a pizza without topping at one end as shown by the cooking depending on the quantity of topping wanted. It would also have been obvious to omit the sauce on a portion of the pizza depending upon the quantity of sauce wanted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number 571-272-1408 The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0987.

January 21, 2004

LIEN TRAN
PRIMARY EXAMINER
Group 1700